ISSUE:

Penal Code 633 currently provides exceptions to Penal Code sections 631, 632, 632.5, 632.6 and 632.7, which essentially prohibit wiretaps, the amplification or recording of confidential communications, and the interception of communications transmitted via cellular or cordless telephones. In practice, the benefit of PC 633 is that it allows sworn officers to record the statements of suspects without notifying them. This is most often utilized during suspect interviews/interrogations, in-car recordings of suspects in custody, and in a pretext phone call situation. A pretext phone call is the recording of a conversation between a victim and a known suspect arranged by law enforcement to gain admissions or other incriminating statements. This technique provides some of the best evidence in cases of date rape and other crimes involving no independent witnesses.

Unfortunately, campus police agencies of the California State University and University of California systems were not among those listed within PC 633 while virtually all other police entities in the state were included. The exact cause of this omission is difficult to ascertain, however, it is clear today that campus law enforcement entities need the ability to obtain these recordings as dictated by their investigations.

HISTORY:

In April 2005, Assemblyman Todd Spitzer introduced AB 992, which intended to add the CSU and UC Police Departments among the law enforcement agencies listed under PC 633. Due to opposition that the bill received from the ACLU, criminal defense attorneys, and some UC faculty members, it was amended to provide the new exceptions only for sexual assault investigations. The bill in its amended form failed to pass from the Public Safety Committee.

Arguments presented during the consideration of the bill indicated a lack of true understanding about the current state of campus law enforcement. While the ACLU presented a general opposition to any expansion of the eavesdropping statutes, the California Attorneys for Criminal Justice (defense bar) stated, “Campus law enforcement lack the training, supervision, and accountability that would help insure that these powers were used in a constitutionally acceptable manner. Giving them broad powers of surveillance would create a more adversarial relationship with the student body and have a chilling effect on the free exchange of information and ideas on our state’s campuses.” UC Faculty members stated, “The university is a unique environment,... In this case police issues that involve academic freedom are dissimilar to what other police departments may face.”
In reality, campus law enforcement officers within the CSU and UC systems are held very accountable and are often provided with a much wider scope of training than their municipal counterparts. Similarly, university law enforcement has been a continually evolving entity, which has significantly increased in its professionalism and responsibilities. One need only reflect upon the tragedies at Virginia Tech and Oikos University to recognize the unique, high-level situations that campus police officers must be prepared to encounter. In many cases, investigations conducted by university police officers involve parolees, registered sex offenders, and other subjects who have come onto the campus to prey upon the students, faculty and staff. University police officers are charged with the safety and welfare of the campus community and require the investigative tools afforded other police entities in the state, including pre-text phone calls, uninhibited patrol vehicle recording devices, and recorded criminal interviews. In these cases, the current burden of informing the subject of the recording chills the free flow of incriminating information, much to the detriment of the campus community they are sworn to safeguard.

Despite the concerns expressed in 2005, academic freedom is not at risk by this change. Campus law enforcement has no more interest in eavesdropping in public venues than do their municipal counterparts. In most cases, the “free exchange of information” occurs in public settings on our campuses, which is not protected from being recorded under existing law. Even so, that is not the focus; this bill is needed to allow for the recording of criminal suspects during in-custody interrogations, detentions, and in pretext phone call situations.

RESOLUTION:

As a 28 year employee of the Sacramento County Sheriff’s Department, I had no idea that campus law enforcement officers did not have the basic, necessary tools to record criminal suspects. Upon my arrival at Sacramento State, I have observed the negative effect that these limitations have had on our investigations and recognize that the same problems are encountered throughout the California State University and University of California systems. As such, my staff has engaged the support of the California Police Officers Association to help introduce language to add, “…any officer of the University of California, and any officer of the California State University,…” to those listed in Penal Code 633. I am providing you with information about this issue and our reasons for trying to remedy the omission that currently exists in the law so that you can be assured that we are working toward your interests. I would also appreciate any support that you can provide to our efforts during next year’s legislative session.

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